

## Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 EURE-00 INRE-00 SSO-00 NSCE-00  
USIE-00 CIAE-00 DODE-00 PM-05 H-01 INR-07 L-03  
NSAE-00 NSC-05 PA-01 PRS-01 SP-02 SS-15 TRSE-00  
IO-13 ACDA-07 /073 W  
-----113210 051611Z /42

O R 051451Z AUG 77  
FM AMEMBASSY BONN  
TO SECSTATE WASHDC IMMEDIATE 0368  
USMISSION USBERLIN IMMEDIATE  
INFO AMEMBASSY BERLIN  
AMEMBASSY LONDON  
AMEMBASSY MOSCOW  
AMEMBASSY PARIS  
USMISSION NATO

C O N F I D E N T I A L SECTION 01 OF 03 BONN 12830

DEPARTMENT PLEASE NOTIFY EUR/CE ON RECEIPT

E.O. 11652: GDS  
TAGS: PGOV, BQG  
SUBJECT: UK EXPRESSIONS OF CONCERN ABOUT RECENT FRG  
ACTIONS CONCERNING BERLIN

REFS: (A) BONN 12813  
(B) 76 USBER 2161 AND PREVIOUS

BEGIN SUMMARY: A RECENT VISIT TO BERLIN BY MINISTER  
OF THE INTERIOR MAIHOFFER FOR THE INDUCTION OF AN  
OFFICIAL OF THE FEDERAL ADMINISTRATIVE COURT WAS  
DISCUSSED AT THE AUGUST 3 BONN GROUP MEETING. THE  
FRG REPS ASSURED US THAT THE VISIT, WHICH WAS ALMOST  
A REPLAY OF A SIMILAR VISIT BY JUSTICE MINISTER VOGEL  
LAST YEAR (WHICH IN TURN OCCASIONED A SOVIET PROTEST)  
WAS OF A CEREMONIAL NATURE ONLY. UK REP (EYERS)  
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USED THE OCCASION TO EXPRESS STRONG CONCERN ABOUT  
THIS AND OTHER RECENT FRG ACTIVITIES CONCERNING  
BERLIN, WHICH ACTIVITIES HAVE ALREADY OCCASIONED TWO  
SOVIET PROTESTS. FRG REPS LATER EXPRESSED TO EMBOFF  
THEIR SURPRISE AND UNHAPPINESS ABOUT EYERS' REMARKS.  
BOTH THE INCREASINGLY TOUGH POSITIONS BEING  
EXPRESSED BY THE BRITISH AND THE FRENCH AND THE

RESULTANT DEFENSIVE ATTITUDE OF THE FRG ARE CAUSE FOR CONCERN, AT A POINT WHEN WHAT IS MORE IMPORTANT IS FRG COOPERATION AND WESTERN UNITY IN THE WAKE OF THE RECENT SOVIET PROTESTS. END SUMMARY

1. AT THE AUGUST 3 BONN GROUP MEETING, THE ALLIED REPS ASKED FOR INFORMATION ABOUT PRESS REPORTS OF THE JULY 28 VISIT OF INTERIOR MINISTER MAIHOFFER TO BERLIN IN CONNECTION WITH THE SWEARING IN OF RUDOLF FRAUENKNECHT, THE NEW OBERSTAATSANWALT (SOLICITOR GENERAL) OF THE BUNDESVERWALTUNGSGERICHT (FEDERAL ADMINISTRATIVE COURT). "TAGESSPIEGEL" REPORTED THAT MAIHOFFER "INDUCTED" FRAUENKNECHT INTO HIS NEW OFFICE.

2. WE WERE TOLD BY FRG BONN GROUP REPS VON BRAUNMUEHL AND WEGENER THAT THE FOREIGN OFFICE HAD HEARD OFFICIALLY OF THE VISIT ONLY ON AUGUST 2. THEY SAID THAT THE VISIT WAS FOR CEREMONIAL PURPOSES ONLY AND THAT THE ALLIES WOULD RECALL THAT JUSTICE MINISTER VOGEL HAD GONE TO BERLIN FOR A SIMILAR PURPOSE LAST YEAR (REF B). AT THIS POINT, UK REP (EYERS) COMMENTED WITH A SMILE THAT THE ALLIES HAD NOT FORGOTTEN BUT THAT HE FEARED THE FRG HAD, RECALLING LAST YEAR'S SOVIET PROTEST AT VOGEL'S PRESENCE. WEGENER SAID THAT THE FOREIGN OFFICE REGRETTED IT HAD NOT KNOWN OF THIS EARLIER AND THAT, IF IT HAD, IT WOULD HAVE

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TRIED TO INFORM US IN ADVANCE. THE US REP NOTED THE DETAILS OF THE REPORTS OF THE VOGEL VISIT LAST YEAR AND ASKED WHETHER THE FRG REPS COULD FIND OUT AND INFORM US AS TO PRECISELY WHAT MAIHOFFER DID DURING HIS VISIT.

3. AS MENTIONED IN REF A, EYERS EXPRESSED SERIOUS PERSONAL CONCERN ABOUT THE MATTER. HE SAID THAT THIS WAS THE THIRD OF THREE OCCASIONS WHICH ARE LIKELY TO DRAW SOVIET FIRE. THE OTHER TWO ARE THE RECENT BAUM STATEMENT ON BERLIN AS A "FEDERAL LAND OF THE FEDERAL REPUBLIC OF GERMANY", ABOUT WHICH THE SOVIETS HAVE NOW MADE DEMARCHES IN THE ALLIED CAPITALS AND TO THE FRG, AND THE FRG PUBLIC PROSECUTOR'S STATEMENTS ON THE LORENZ CASE. WHATEVER MAY BE THE LEGAL POSITION, HE SAID HE FOUND IT "INCOMPREHENSIBLE" THAT SUCH A SERIES OF STATEMENTS AND VISITS COULD BE MADE WHICH DO NOT SERVE THE INTERESTS OF THE FRG AND WHICH ARE CAPABLE OF BEING READ BY THE SOVIETS AS INTENTIONAL PROVOCATIONS. THIS IS PARTICULARLY TRUE

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SS-15 NSCE-00 SSO-00 USIE-00 INRE-00 TRSE-00 IO-13  
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O R 051451Z AUG 77  
FM AMEMBASSY BONN  
TO SECSTATE WASHDC IMMEDIATE 0369  
USMISSION USBERLIN IMMEDIATE  
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AMEMBASSY LONDON  
AMEMBASSY MOSCOW  
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SINCE THE FRG HOPES TO COMMENCE NEGOTIATIONS WITH THE  
GDR IN THE NEAR FUTURE. EYERS SAID THAT THERE HAD  
BEEN NO ADVANCE WARNING GIVEN TO THE BONN GROUP ABOUT  
THE BAUM STATEMENT OR MAIHOFFER VISIT AND WE WERE  
INFORMED OF THE DETAILS OF THE INDICTMENT IN THE  
LORENZ CASE ONLY A FEW DAYS BEFORE IT WAS PRESENTED  
TO THE COURT. EYERS POINTED OUT THAT THE FRG HAD NOT  
DRAWN OUR ATTENTION TO THE FACT THAT KAUL, THE MAN  
WHO SIGNED THE INDICTMENT, WAS THE ACTING FEDERAL  
PROSECUTOR IN KARLSRUHE. HE ALSO SUGGESTED THAT THE  
FRG HAD NOT OBSERVED THE TERMS OF THE NON-PAPER BY  
WHICH THE ALLIES GAVE THEIR CONSENT TO HOLDING THE  
TRIAL IN BERLIN. EYERS COMMENTED THAT HE WAS CON-  
CERNED THAT THE UK MAY FIND IT NECESSARY TO MAKE  
STATEMENTS IN BERLIN FOR THE PURPOSE OF SETTING THE  
RECORD STRAIGHT, WHICH STATEMENTS WOULD BE UNWELCOME  
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TO THE FRG.

4. THE FRENCH REP (RICHARD) SAID THAT THE FRENCH SHARE THE UK CONCERN. THE US REP SAID THAT, ASSUMING THAT THE MAIHOFFER VISIT WAS PURELY CEREMONIAL, THE PROBLEM IS NOT SO MUCH THE FACT BUT THE PUBLICITY AND THAT THERE WAS PRESUMABLY NO CAUSE FOR CONCERN ABOUT THE LEGAL BASIS EITHER OF THE MAIHOFFER VISIT OR THE LORENZ CASE. EYERS RESPONDED THAT HE MAY BE CONCERNED ABOUT THE LEGAL BASIS AND WE REMINDED HIM THAT OUR STATEMENT WAS PREFACED BY AN ASSUMPTION THAT THE VISIT WAS PURELY CEREMONIAL, AS THE VOGEL VISIT LAST YEAR WAS REPORTED TO BE. THE US LEGAL ADVISOR SAID THAT THERE WAS PERHAPS A "MISSED OPPORTUNITY" HERE, THAT MAIHOFFER COULD HAVE USED THE INVITATION TO TELL FRAUENKNECHT THAT WHILE HE (MAIHOFFER) WOULD HAVE LIKED TO ATTEND THE CEREMONY, HE DID NOT BELIEVE IT WOULD BE APPROPRIATE IN VIEW OF THE SPECIAL STATUS OF BERLIN BUT THAT HE WISHED THE NEW MAN WELL AND HOPED TO SEE HIM IN THE NEAR FUTURE. THE LEGAL ADVISOR NOTED THAT THIS WOULD HAVE BEEN AN OPPORTUNITY TO UNDERSCORE THE SPECIAL SITUATION IN BERLIN.

5. VON BRAUNMUEHL NOTED THAT, IN RESPONSE TO LAST YEAR'S SOVIET PROTEST, THE ALLIES TOOK THE POSITION THAT THE VOGEL VISIT WAS LEGAL AND ASKED WHETHER THERE WAS A CHANGE IN THE ALLIED POSITION. EYERS SAID THAT THERE MIGHT HAVE BEEN IF WE HAD KNOWN ABOUT THE VISIT IN ADVANCE. HE SAID THAT WE ARE "SAILING CLOSE TO THE WIND" WITH RESPECT TO CERTAIN FRG ACTIVITIES IN BERLIN AND THAT IN TIME, THE UK MAY COME TO THE POINT OF DECIDING WHETHER IT WILL SWALLOW SOMETHING WHICH IT CONSIDERS TO BE A VIOLATION OF THE QUADRI-CONFIDENTIAL

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PARTITE AGREEMENT OR MAKE A PUBLIC STATEMENT WHICH WILL BE UNWELCOME TO THE FRG.

6. VON BRAUNMUEHL ASKED WHAT THE CONNECTION WAS IN THE THREE CASES. EYERS SAID THAT THE SOVIETS WILL FIND IT HARD NOT TO INTERPRET THIS AS A PROVOCATION AND ASKED RHETORICALLY WHETHER THIS IS WISE IN POLITICAL TERMS. HE REPEATED HIS EXPRESSION OF CONCERN. THE FRG REPS PROMISED TO SECURE THE FACTS AND REPORT BACK.

7. BOTH WEGENER AND FRG REP VON ARNIM (WHO HAD LEFT THE MEETING EARLY) TOLD US AUGU 4 IN SEPARATE CONVERSATIONS THAT THEY WERE RATHER SURPRISED BY THE

TONE AND CONTENT OF EYERS' REMARKS. VON ARNIM  
THOUGHT IT WAS PARTICULARLY UNFAIR OF EYERS TO HAVE  
MADE HIS COMMENTS AFTER LUECKING, THE SENIOR  
BONN GROUP REP, AND VON ARNIM HAD LEFT THE MEETING  
SINCE WEGENER, THE MOST JUNIOR OF THE FRG REPS, HAS  
BEEN WITH THE BONN GROUP ONLY A SHORT TIME, AND IT  
WAS VON BRAUNMUEHL'S FIRST MEETING. VON ARNIM CALLED  
EYERS' REMARKS "STRONG STUFF," ESPECIALLY HIS  
SUGGESTION THAT THE FRG HAS VIOLATED THE NON-PAPER,  
AND SAID THAT NONE OF THOSE PRESENT AT THE MEETING  
HAD BEEN IN THE BONN GROUP LAST YEAR (AS HE HAD)  
WHEN THE PAPER WAS NEGOTIATED. WEGENER SAID THAT  
WHAT EYERS SEEMED TO BE DEMANDING WAS THAT THE NON-  
PAPER SHOULD HAVE BEEN "WATERTIGHT," WHICH IT WAS NOT.  
VON ARNIM SAID THAT IT IS A MATTER OF INTERPRETATION  
AS TO WHAT THE NON-PAPER'S REQUIREMENT THAT PUBLICITY  
BE HANDLED WITH "PARTICULAR RESERVE AND DISCRETION"  
MEANS AND THE FRG VIEW WAS THAT THE RECENT PUBLICITY  
DID NOT VIOLATE THE TERMS OF THE NON-PAPER.

8. VON ARNIM ALSO SAID THAT THE FRG HAD GONE BEYOND

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O R 051451Z AUG 77

FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 0370

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WHERE IT MIGHT HAVE BEEN PRUDENT TO GO, IN VIEW OF THE LEGAL IMPLICATIONS INVOLVED, IN INFORMING THE ALLIES OF DETAILS OF THE INDICTMENT BEFORE IT HAD BEEN PRESENTED IN COURT, AND THAT HE THOUGHT EYERS' CRITICISM ON THIS SCORE WAS UNJUSTIFIED. VON ARNIM SAID THAT THE DANGER OF REMARKS SUCH AS THOSE MADE BY EYERS IS THAT THE OFFICIALS IN OTHER AGENCIES MAY BE INCLINED TO DEFEND THEIR OWN ACTIONS AGAINST THE FOREIGN OFFICE'S REQUESTS THAT PUBLICITY BE MUTED. HE SAID THAT, IN HIS VIEW, IT IS THE PURPOSE OF THE BONN GROUP TO ENSURE THAT THE NATURAL PRESSURES WHICH NATIONAL INTERESTS GENERATE ARE NOT PERMITTED TO HAVE ADVERSE EFFECTS AND THAT STATEMENTS SUCH AS EYERS' HAVE NOT BEEN MADE BEFORE IN THE BONN GROUP. ON A MORE CONGENIAL NOTE, WEGENER OPINED THAT THE US LEGAL ADVISER'S SUGGESTION REGARDING THE "LOST CONFIDENTIAL

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OPPORTUNITY" WAS A POSITIVE RECOMMENDATION BUT PROBABLY DIFFICULT TO IMPLEMENT.

9. COMMENT: THIS WAS ONE OF THE LIVELIER BONN GROUP MEETINGS OF THE RECENT PAST; IT DID NOT REACH A LEVEL OF ACRIMONY PROBABLY BECAUSE THE RELATIVELY NEW FRG REPS WERE ILL-PREPARED TO COUNTER EYERS' ARGUMENTS. WHILE WE AGREE THAT THE RECENT CONFLUENCE OF EVENTS IS UNFORTUNATE, WE ARE NOT PREPARED TO BE QUITE AS CRITICAL OF THE FRG AS EYERS WAS. HIS REMARKS ABOUT THE INDICTMENT WERE PROBABLY COUNTER-PRODUCTIVE BECAUSE, EVEN THOUGH IT WOULD HAVE BEEN BETTER TO HAVE THE INDICTMENT SIGNED IN BERLIN OR AT A LOWER LEVEL, THE INDICTMENT IS NOT EVEN COVERED IN THE NON-PAPER. THIS FACT GIVES THE FRG REPS AN OPPORTUNITY TO DEFEND THE FRG ACTION, A DEFENSE WHICH TENDS TO DETRACT ATTENTION FROM OTHER, LESS DEFENSIBLE, ASPECTS OF THE WAY THE FRG HAS HANDLED THE AFFAIR. IT IS IN ONE SENSE UNFORTUNATE THAT THE FOREIGN OFFICE CONTINUES TO DEFEND THE RECENT PUBLIC STATEMENTS BY THE FEDERAL PROSECUTOR SINCE THIS GIVES THE IMPRESSION THAT SIMILAR STATEMENTS MAY BE MADE IN THE FUTURE. ON THE OTHER HAND, THE FOREIGN OFFICE MAY, FOR PURPOSES RELATED TO FRG INTER-AGENCY BUREAUCRATIC

POLITICS, FEEL COMPELLED TO DEFEND THE ACTION OF THE  
PUBLIC PROSECUTOR'S OFFICE VIS-A-VIS THE ALLIES IN  
ORDER TO RETAIN ITS ABILITY TO PRESSURE THAT OFFICE  
TO BE MORE DISCREET. AS REPORTED IN A SEPARATE TELE-  
GRAM, WE ARE CONCERNED THAT THE LORENZ CASE MAY BE  
DEVELOPING INTO A CONFRONTATION WHICH WILL FIND THE  
FRG AND THE ALLIES DIVIDED INTO SEVERAL CAMPS, WHEN  
WHAT IS NEEDED AT THE MOMENT IS A COMMON FRONT AGAINST  
THE SOVIET EFFORTS TO EXPLOIT TARGETS OF OPPORTUNITY  
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IN FURTHERANCE OF WHAT WE HAVE LONG RECOGNIZED AS A  
CAMPAIGN TO ERODE THE TIES BETWEEN BERLIN AND THE FRG.  
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## Message Attributes

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**TAGS:** PGOV, WB, UK, GE, GC, BQG, (MAIHOFFER, WERNER)  
**To:** STATE USBERLIN  
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